

## **Plaintiffs' Exhibit QQ**

Volume VIII  
Sexual and Gender-Based Misconduct



**SEXUAL MISCONDUCT, DOMESTIC VIOLENCE, DATING VIOLENCE, AND  
STALKING POLICY**

**Effective Date:** May 8, 2017

**Policy Number:** VIII – 8

**Supersedes:** Not Applicable.

**Issuing Authority:** Board of Trustees

**Responsible Officer:** Title IX Coordinator

**Applicability:** All Canisius College community members, including students, employees, volunteers, visitors, and contractors.

**History:**

## PURPOSE

The purpose of this policy is to address the college's responsibilities under Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* ("Title IX"), the Violence Against Women Reauthorization Act of 2013 ("VAWA"), and New York Education Law Article 129-B (commonly referred to as the "Enough is Enough" law) by providing the Canisius College community with a clearly articulated set of behavioral standards, common understandings of definitions and key concepts, and descriptions of Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking. [1]

## POLICY

Canisius College will not tolerate any form of Sexual Misconduct (which includes Sexual or Gender-Based Discrimination or Harassment, Sexual Assault, and Sexual Exploitation), Domestic Violence, Dating Violence, or Stalking (hereinafter "Sexual and Gender-Misconduct"). These forms of conduct are prohibited by the college and may also violate federal and state law. In addition, the college strictly prohibits retaliation against anyone who files a complaint, serves as a witness, or otherwise participates in the enforcement of college policy. Filing a formal report of a violation of college policy will not affect a student's grades, class selection, residence life status or any other matter pertaining to student status and, in the case of employees, an individual's employment status, compensation, or work assignments.

The college also seeks to prevent Sexual and Gender-Based Misconduct by providing:

- Educational programs and campaigns to promote the awareness and prevention of Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking, including primary prevention and awareness programs for all incoming students and new employees, as well as ongoing prevention and awareness campaigns for students and employees;
- Assistance and support, including procedures sensitive to individuals who have been reported to be the victim of a Sexual Misconduct, Domestic Violence, Dating Violence, or Stalking offense;
- Amnesty from violations of the college's alcohol and/or drug use policies occurring at or near the time of the commission of an incident of Sexual Misconduct, Domestic Violence, Dating Violence, or Stalking for bystanders or individuals acting in good faith that disclose such an incident to college officials or law enforcement; and
- A process for the prompt and equitable investigation and resolution of incidents of Sexual Misconduct, Domestic Violence, Dating Violence, or Stalking that includes appropriate disciplinary sanctions for those who commit such offenses, as well as the imposition of remedial actions to address and remedy the effects of such offenses.

Canisius College is committed to stopping incidents of Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking, preventing their recurrence, and addressing and remedying its effects within the college community. It makes this policy and accompanying information readily available to all students, employees, and other members of the college community.

Violations of college policy may result in the imposition of sanctions up to and including termination or expulsion (see Sanctions).

The college maintains a corresponding Anti-Discrimination and Anti-Harassment policy to address reports of discrimination or harassment unrelated to sexual or gender-based misconduct. This Anti-Discrimination/Harassment Policy may be accessed here ([click here](#)).

## DEFINITIONS

All forms of **Sexual and Gender-Based Misconduct** are prohibited by college policy. For purposes of college policy, **Sexual and Gender-Based Misconduct** is defined to include the following:

*Sexual Harassment* - unwelcome sexual advances, requests for sexual favors, other verbal, visual or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence or other offensive behavior directed toward an individual because of or on account of the individual's sex, whether by a person of the opposite or same gender, when either:

- Submission to, rejection, or toleration of such conduct is made explicitly or implicitly a term or condition of an individual's employment, education, living environment, or participation in a Canisius College program or activity; or
- Submission to, rejection, or toleration of such conduct is used as a basis for or a factor in decisions affecting that individual's employment, education, living environment or participation in a Canisius College program or activity; or
- Such conduct creates a Hostile Environment (see Hostile Environment Harassment);

*Gender-Based Hostile Environment Harassment* - the unlawful harassment against an individual on the basis of his or her gender, sex, sexual orientation, sexual identity, gender identity, or gender expression when the conduct is either:

- Sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit the individual's ability to participate in or benefit from the college's programs or activities; or
- The conduct has the purpose or effect of unreasonably interfering with an individual's employment or education.

The determination of whether an environment is "hostile" must be based on all of the circumstances, giving consideration to whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:

- The degree to which the conduct affected one or more students' education or individual's employment;
- The nature, scope, frequency, duration, severity, and location of incident or incidents;
- The intent, purpose or objective(s) of the participants involved in the conduct; and
- The identity, number, and relationships of persons involved.

A single or isolated incident of Gender-Based Hostile Environment Harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to provide a hostile environment, particularly if the harassment is physical in nature. While the intent of the actors involved in the conduct will be considered as part of the overall assessment of whether a "hostile" environment has been created, maintained or promoted, the absence of an intent to offend, demean, injure or harass will not be determinative of the issue.

The foregoing definitions of harassment must be interpreted in light of one of the fundamental purposes of a Canisius College education which is to teach students to think, write and express themselves critically. This is a demanding skill and students must confront in stark and sometimes painful ways the comfortable assumptions that they bring to the college experience. Instruction in critical thinking very well may involve saying or presenting materials that are felt by individuals to be offensive or embarrassing. In such cases, students should communicate directly with the faculty member involved, the department chair or the associate dean of the applicable school. See Section regarding Academic Freedom. Nor is this policy intended to address normal differences of opinion that arise but are not based on a person's protected status. In the case of students, those matters can be addressed through the procedures set forth in the Community Standards. In the case of employees, those matters can be addressed through procedures set forth in the Faculty Handbook, and *Volume III of the Canisius College Policy Manual* or through the Human Resources Office.

**Forms of Sexual Harassment or Gender-Based Hostile Environment Harassment:** Sexual Harassment or Hostile Environment Harassment based on one's sex or gender-related status may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or gender-related status, even if the acts do not involve conduct of a sexual nature. In either type of harassment, the conduct (and the impact of that conduct) will be evaluated based on the standard of a reasonable person in the position of the Reported Victim.

Sexual Harassment or Gender-Based Hostile Environment Harassment can take many forms:

- It may be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- It does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- It may be committed by anyone, regardless of gender, age, position, or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational, or employment relationships (e.g., supervisor to subordinate, faculty member to student, coach to student-athlete, student leader to first year student), harassment can occur in any context and between persons of equal power status (e.g., student to student, staff to staff, faculty member to faculty member, visitor/contracted employee to staff).
- It may be committed by a stranger, an acquaintance, or someone with whom the Reporting Individual has an intimate or sexual relationship.
- It may be committed by or against an individual or may be a result of the actions of an organization or group.



- It may occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation.
- It may occur in the classroom, in the workplace, in residential settings, over electronic media (including the internet, telephone, and text), or in any other setting.
- It may be a direct proposition of a sexual nature.
- It may be a one-time event or part of a pattern of behavior.
- It may be committed in the presence of others or when the parties are alone.
- It may affect the Reporting Individual and/or third parties who witness or observe harassment.

Examples of Sexual Harassment or Gender-Based Hostile Environment Harassment include but are not limited to the following situations, whether or not there is the presence of a relationship that puts one person in a position of authority:

- unwelcome sexual propositions, invitations, solicitations, and flirtations; leering;
- unwelcome and inappropriate touching, patting, fondling, pinching, or obscene gestures;
- seeking sexual favors or relationships in return for the promise of a favorable grade, favorable employment action, or other academic or employment benefit or opportunity;
- conditioning an employment-related action (such as hiring, promotion, salary increase, performance appraisal, or refraining from discipline or termination) on a sexual favor or relationship;
- conditioning an academic-related action (such as a grade, assignment, or refraining from discipline) on a sexual favor or relationship;
- unwelcome communications of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, jokes or innuendos; unwelcome suggestive or insulting sounds or whistles; obscene telephone calls, text messages or social media postings;
- sexually suggestive objects, pictures, videotapes, audio recordings or literature, or electronic transmissions placed in the work or study area, that may embarrass or offend individuals, subject to general principles of academic freedom discussed herein (click here or see below); or
- in the case of co-workers or individuals in positions of authority, conduct of the nature set forth above when the effect is to unreasonably interfere with the ability of a person to perform his or her employment or academic responsibilities, or when the effect is to create an offensive, intimidating and/or hostile working or learning environment for that person.

Unwelcome sexual behavior toward another employee or student, which is sufficiently severe or pervasive to alter the conditions of the victim's employment or academic surroundings and results in a work or educational environment that a reasonable person would find abusive or offensive creates a "hostile environment."

Isolated instances (e.g., a single sexual overture, comment, invitation or joke) ordinarily will not constitute Sexual Harassment or Gender-Based Hostile Environment Harassment unless there is repetition or the circumstances are particularly severe or egregious. In this regard, occasional compliments also generally will not constitute Sexual Harassment or Gender-Based Hostile Environment Harassment. Sexual behavior that is welcomed and consensual may not constitute Sexual or Gender-Based Harassment as well.

**Sexual Assault**—physical sexual acts perpetrated against a person's will or where a person is incapable of giving or manifesting consent due to the victim's use of drugs or alcohol or other incapacity, such as being a minor or having an intellectual or other disability. This includes the following:

**Sex Offenses-Forcible[2]**—Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the subject is incapable of giving consent.

**Forcible Rape** - The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the subject is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

**Forcible Sodomy** - Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the subject is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

**Sexual Assault With An Object** - The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the subject is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

**Forcible Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the subject is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

**Sex Offenses-Nonforcible**—Unlawful, nonforcible sexual intercourse.

**Incest** - Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape** - Nonforcible sexual intercourse with a person who is under the statutory age of consent.

*Note: The above definitions will be utilized in determining whether an incident of Sexual Assault in violation of college policy by the preponderance of the evidence standard has occurred (and not to determine whether a crime has been committed). The above definitions will also be utilized by the college for Clery Act Reporting purposes.*

**Dating Violence**—violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the subject. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

**Domestic Violence**—a felony or misdemeanor crime of violence committed: By a current or former spouse or intimate partner of the subject; By a person with whom the subject shares a child in common; By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; By a person similarly situated to a spouse of the subject under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; By any other person against an adult or youth subject who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

**Stalking**— means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

Note: The above definitions will be utilized in determining whether an incident of Dating Violence, Domestic Violence or Stalking in violation of college policy by the preponderance of the evidence standard has occurred (and not to determine whether a crime has been committed). The above definition will also be utilized by the college for Clery Act Reporting purposes.

**Sexual Exploitation** - an act or omission to act that involves a member of the Canisius College community taking non-consensual, unjust, humiliating, or abusive sexual advantage of another, either for the individual's own advantage or to benefit anyone other than the one being exploited. Examples of sexual exploitation include but are not limited to the following:

- Creating pictures, movies, web cam, tape recording, graphic written narrative or other means of memorializing sexual behavior or a state of undress of another person without the other's knowledge and consent;
- Sharing items described in paragraph (1) above, beyond the boundaries of consent where consent was given. For example, showing a picture to friends where consent to view it was given for oneself only;
- Observing or facilitating observation by others of sexual behavior or a state of undress of another person without the knowledge and/or consent of that person;
- "Peeping Tom"/Voyeuristic behaviors;
- Engaging in sexual behavior with knowledge of an illness or disease (HIV or STD) that could be transmitted by the behavior;
- Encourage others to engage in sexual behavior in exchange for money;
- Surreptitiously providing drugs (including so-called "date-rape" drugs such as Rohypnol or GHB), or alcohol to a person for the purpose of sexual exploitation; and
- Causing another person to be exposed to pornographic material without the person's advance knowledge or consent.

**Sexual and Gender-Based Misconduct** - an umbrella term that includes sexual assault, sexual harassment, hostile environment harassment, domestic violence, dating violence, stalking, and, sexual exploitation.

**Retaliation** - taking adverse action against an individual making a report under college policy or against any person cooperating or participating in the investigation of a report or the enforcement of any protections, accommodations, Interim Measures, sanctions, or remedial actions under college policy. Retaliation includes intimidation, threats, harassment, and other adverse action including adverse job action and adverse academic action against any Reporting Individual or Reporting Party.

**Intimidation** - implied threats or acts that cause an unreasonable fear of harm in another.

**Aiding or Facilitating Sexual or Gender-Based Misconduct** - promoting, aiding, facilitating or encouraging the commission of any behavior prohibited under college policy is also prohibited by this Policy.

#### **Other Definitions**

**Accused** - a person accused of a violation of college policy who has not yet entered one of the college's judicial or disciplinary conduct process.

**Awareness Programs** - community-wide or audience specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent Sexual Misconduct, promote safety, and reduce perpetration.

**Bystander** - person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of the college, but is not directly impacted by the conduct or the incident.

*Bystander Intervention* - safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes: a.) recognizing situations of potential harm; b.) understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking actions to intervene.

*Coercion* - coercion is the improper use of pressure to compel another person to initiate or continue sexual activity against his/her will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and extortion. Examples of coercion include threatening to disclose personal information such as one's sexual orientation, gender identity or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

*College Community or Campus Community* - broad terms that refers to all employees, students, visitors, volunteers, contractors and others in connection with college-sanctioned activities, programs on - or off-campus, including study/travel abroad, internship programs.

*College Representatives* - the Title IX Coordinator; Public Safety Staff; Student Affairs professionals; Resident Assistants and Hall Directors; Coaches, trainers and athletic staff; Club and organization advisors; Individuals designated as Campus Security Authorities for Clery Act compliance purposes; and any other Individuals designated as Responsible Employees for Title IX compliance purposes.

*Consent* - Individuals must have affirmative consent before engaging in any Sexual Activity. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

While not required by state or federal law, Canisius strongly recommends that individuals ask for and receive verbal consent before engaging in sexual activity.

In addition,

- Consent to any Sexual Act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity (including all Sexual Contact) must stop.

*Sexual Activity*— shall mean a "Sexual Act" and "Sexual Contact" as provided in 18 U.S.C. 2246(2) AND 18 U.S.C. 2246(3);

*Sexual Act*—means (a) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; (b) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(c) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (d) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

*Sexual Contact*—means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

*Day* - a "day" is a business day, unless otherwise specified.

*Disclosure* - information provided by a victim about an incident of Sexual and Gender-Based Misconduct to a confidential on or off-campus resource.

*Employee* - any member of the faculty, administration, or staff employed by the college on either a full or part-time basis at the time that a Report of a violation of this Policy is made. Solely for purposes of this definition, the term "employee of the college" does not include students who are employed by the college through a work-study, graduate assistantship, or similar program.

*Enough is Enough Legislation* - means New York Education Law Article 129-B, N.Y. Educ. L. §§ 6439-6449.

*FERPA (Family Educational Rights and Privacy Act)* - the privacy and confidentiality of all student records shall be preserved in accordance with the Family Educational Rights and Privacy Act of 1974 as amended.

*Interim Measures* - Counseling, health, mental health, victim advocacy, legal assistance, visa and immigration status, student financial aid and other services available for Reported Victims within the college and in the community and the availability of changes to academic, living, transportation, and working situations or protective measures, regardless of whether the Reporting Individual reports to an external law enforcement agency or submits a formal complaint to the college.

*Investigator* - the person tasked with investigating a report. All Investigators shall receive annual training regarding such issues as the laws governing Discrimination, Harassment and Retaliation; Title IX, VAWA/Campus SaVE Act (as defined below), and Enough is Enough; as well as other related state and federal laws prohibiting Discrimination, Harassment and Retaliation based on Gender or Sex, including Sex Discrimination, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence and Stalking; Student and witness privacy rights; and the Family Educational Rights and Privacy Act of 1974 (FERPA). The Investigator shall not be within the administrative control or authority of any Responding Individual who is a college Employee, or otherwise has (or creates the appearance of having) a conflict of interest.

*Ongoing Prevention & Awareness Campaigns* - programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution.

*Personally identifiable Information* - "Personally identifiable Information" (as that term is defined by FERPA) includes, but is not limited to: a student's name; the name of a student's parent(s) or other family members; the address of a student or a student's family; a personal identifier, such as a student's social security number, student number, or biometric record; other indirect identifiers, such as a student's date of birth, place of birth, or mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student and that would allow a reasonable person in the college community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person whom the college reasonably believes knows the identity of the student to whom the Education Record relates.

*Policy*—this Sexual and Gender-Based Misconduct Policy.

*Preponderance of Evidence* - the required standard for determining a violation under this Policy. Those individuals charged with rendering a decision of a policy violation must be convinced, based on the information provided, that a policy violation was more likely to have occurred than to not have occurred in order to find a Responding Party responsible for violating this Policy.

*Primary Prevention Programs* - programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe direction.

*Proceeding* - all activities related to a non-criminal resolution of an institutional disciplinary report, including, but not limited to, fact finding investigations, formal or informal meeting, and hearings. Proceeding does not include communications and meetings between officials and Reporting Individuals concerning accommodations or protective measures to be provided to a Reporting Individual.

*Report*—a formal complaint made by a Reporting Individual to a non-confidential college official or responsible employee.

*Reporting Individual*—an individual who reports to a non-confidential college official or Responsible Employee a concern regarding possible Sexual and Gender-Based Misconduct, or a person who claims to have experienced an incident of Sexual and Gender-Based Misconduct, and who has not yet filed a formal Report with the college under this Policy.

*Reporting Party*—an individual who reports to a non-confidential college official or Responsible Employee a concern regarding possible Sexual and Gender-Based Misconduct, and who thereafter elects to pursue a complaint against a Responding Individual or a Responding Party under this Policy.

*Responding Individual*—an individual who is the subject of a Report to a non-confidential college official or Responsible Employee regarding possible Sexual and Gender-Based Misconduct.

*Responding Party* - a person who is the subject of a complaint of a violation of this Policy who has entered the college's judicial or disciplinary conduct process.

*Responsible Employee*—any college employee that has the authority to take action to redress Sexual and Gender-Based Misconduct, has the duty to report such misconduct to appropriate college officials, or is someone a student could reasonably believe has this authority or responsibility.

*Result*—any initial, interim and final decision by any official or entity authorized to resolve disciplinary matters within the college. The Result must include a description of sanctions imposed by the college, if any. Notwithstanding any provision of the Family Educational Rights and Privacy Act (FERPA), the Result reported under this Policy must also include the rationale for the Result and the sanctions, if any.

*Risk Reduction*—options designed to decrease perpetration and bystander inaction, and to increase empowerment for persons in order to promote safety and to help individuals and communities address conditions that facilitate violence.

*Student*—any individual who, at the time of the alleged Sexual or Gender-Based Misconduct and the making of a disclosure or report to the college is either: (1) admitted as a student to the college and has been moved to deposited status; (2) an enrolled student; (3) a student between academic terms or on a Leave of Absence (regarding whom the college has a reasonable expectation of their return); (4) a graduate awaiting a degree; (5) an individual who was enrolled as a student at the college at



the time she or he was alleged to have violated this Policy or violated applicable Community Standards, or was charged with a violation of this Policy or a violation of the Community Standards, but who thereafter graduated from or transferred from the college prior to a final determination of responsibility with respect to said charge; or (6) a student who withdraws from or otherwise leaves the college while a Community Standards matter or a charge of a violation of this Policy (including an investigation) is pending. A student ceases to be a student at Canisius or purposes of this Policy when she or he graduates, excepting a student who graduates under the circumstances set forth in subparagraph 5, above. Solely for purposes of this definition, the term "employee of the college" does not include students who are employed by the college through a work-study, graduate assistantship, or similar program

*Third Party*—any guest of the college; alumnus or alumna; volunteer; or contractor, consultant, or vendor doing business or providing services to the college.

*Title IX*—means Title IX of the Education Amendments of 1972 ("Title IX"), which is a federal law that prohibits sexual discrimination in federally funded education programs and activities.

*VAWA* - means the Violence Against Women Reauthorization Act of 2013 (which amends the Jeanne Clery Disclosure of Campus Crimes Statistics Act, commonly known as the Clery Act) (20 U.S.C. 1092(f)), under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act).

## PROCEDURES/GUIDELINES

### I. Scope and Jurisdiction

#### A. Scope of Policy

This Policy applies to all Canisius College Students, Employees, volunteers, and visitors, as well as to contractors, consultants, and vendors doing business or providing services to the college ("Third Parties"), regardless of an individual's race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. The college will receive and address reports received from any individual, whether or not affiliated with Canisius, that a college community member has violated this Policy.

The college's prohibition against Sexual and Gender-Based Misconduct applies not only in the educational, student residential and working environment, but also to all other work-related, student residential, and educational life settings, such as business trips and business-related social functions, as well as educational field trips, athletic trips, study abroad trips, service immersion trips, and internship placements. Further, the prohibition applies whether or not the incident(s) occurs on the Canisius College campus and whether or not the incident(s) occurs during working/educational hours. In responding to off campus events, the college will consider the effects of the off-campus conduct on an individual's working, residential life, or educational experience, including the impact on the individual's ability to participate in college activities or programs. Finally, the college's prohibition applies not only to physical contact, but also oral, written and electronic and other technology-assisted communications, such e-mail, voice mail, Internet communications and searches.

#### B. Period of Limitations

There is no specific period of time after an incident of Sexual and Gender-Based Misconduct is alleged to have occurred during which a Report must be made. The college, however, strongly

encourages timely reporting in order to preserve evidence for a potential legal or college resolution proceeding. Delays in reporting may limit the college's ability to respond fully to the Report.

If the Responding Individual is no longer a Student or Employee, the college may not be able to take disciplinary action against the individual, but it will still seek to meet its Title IX obligation by providing support for a Reporting Individual and taking steps to end the harassment, prevent its recurrence, and address its effects.

*Note:* The use of alcohol and/or drugs by a Responding Individual or a Responding Party is not an excuse for violation of this Policy and will not constitute a valid defense to the charge of a Policy or Community Standards violation determined hereunder.

### **C. Coordination with the College's Discrimination and Harassment Policy**

Other forms of discrimination, including discrimination based on race, religion, disability, or any other non-gender related protected characteristics are addressed by the college's Anti-Discrimination/Harassment Policy ([click here](#)). When alleged misconduct relates to both a person's sex or gender related status and other protected characteristics, the college will coordinate the investigation and resolution efforts by following the process set forth in this policy to address any and all harassment and discrimination. Individuals with questions about which Policy applies in a specific instance can contact the college's Title IX Coordinator, who has sole discretion to determine the process that will be employed by the college in such circumstances.

### **D. Academic Freedom**

The Board of Trustees of Canisius College has accepted and endorsed as its own a definition of academic freedom published by the AAUP and AAC as set forth in the Faculty Handbook. The Board will do its best to protect and uphold academic freedom in keeping with the AAUP academic freedom statement. That definition of academic freedom is incorporated herein by reference. Conduct claimed to constitute harassment and sexual harassment must be interpreted in light of the principle of academic freedom so as to protect a faculty member's right to teach, research and publish freely. The college does not intend that this Policy will be used to address the normal differences of opinion that may arise in the academic setting and are part of the normal process of teaching and learning.

### **E. Student Bill of Rights**

Under relevant provisions of New York law, all students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the college;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the college courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the Reporting Individual is at fault when these crimes and violations are reported to have been committed, or should have acted in a different manner to avoid such crimes or violations;



7. Describe the incident to as few college representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the college, any student, the Responding Individual or the Responding Party, and/or the Reporting Individual or Responding Party's friends, family and acquaintances within the jurisdiction of the college;
9. Have access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a Reporting Party, or a Responding Party, throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the college.

## II. Title IX Coordinator

The Title IX Coordinator is responsible for monitoring the overall Title IX implementation for Canisius College and coordinating compliance with all areas and departments covered under Title IX regulations. If a Complaint is filed, the Title IX Coordinator will attempt to meet with the Reporting Individual or Reporting Party to explain the available options, the process used to investigate the Report or Complaint, and any available support, resources, and protective measures.

The Title IX Coordinator shall be informed of all non-confidential reports and complaints raising Title IX and VAWA issues, even if the report or Complaint was initially filed with another individual or office.

The Canisius College Title IX Coordinator is:

Terri L. Mangione, PhD  
Vice President for Student Affairs

Old Main 102

716-888-2130

[mangiont@canisius.edu](mailto:mangiont@canisius.edu)

Concerns about the college's application of Title IX, the Violence Against Women Reauthorization Act of 2013; Title VII of the Civil Rights Act of 1964; the Clery Act; and the New York State Enough is Enough Law may be addressed to the college's Title IX Coordinator.

In addition, concerns may be raised with the United States Department of Education, Clery Act Compliance Division, or the United States Department of Education, Office for Civil Rights, at [OCR@ed.gov](mailto:OCR@ed.gov) or (800) 421-3481.

## III. Resources for Immediate Help

A member of the campus community who claims to have been sexually assaulted or claims to have been the victim of an incident of criminal sexual misconduct has the right to make a report to Public Safety, local law enforcement, and/or State Police or choose not to report; to report the incident to the college or choose not to report; to be protected by the college from retaliation for reporting an incident; and to receive assistance and resources from the college.

A member of the campus community who has been sexually assaulted or to have been the victim of an incident of sexual misconduct has the right to confidentiality, to the extent reasonably possible under the circumstances. Even Canisius employees who cannot promise or guarantee

confidentiality will strive to maintain the privacy of the reporting individuals. The information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator and the college to investigate, to assure the safety and security of the Campus Community and/or seek a resolution of the matter.

#### **A. Immediate On Campus Help**

**(\*Denotes privileged communication, protected and confidential by law)**

##### **Title IX Coordinator:**

Terri L. Mangione, PhD

Vice President for Student Affairs

Old Main 102

716-888-2130

[mangiont@canisius.edu](mailto:mangiont@canisius.edu)

##### **\*Sexual Assault Liaison (Student Only Confidential Resource):**

Eileen Niland, MS, LMHC, NCC

Counseling Center, Bosch 105

716-888-2620

##### **Department of Public Safety:**

Bosch Hall

711 (on-campus)

888-2330 (off-campus)

##### **\*Counseling Center (Student Only Confidential Resource)**

Bosch Hall

Phone: 888-2620

##### **\*Canisius College Student Health Center (Student Only Confidential Resource)**

2001 Main Street

Phone: (716) 888-2610

The above officials are available at any time, including upon the initial disclosure of an alleged Policy violation, to provide written information regarding available resources both on and off campus, reporting options, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic exam or other medical examination as soon as possible.

#### **B. Immediate Off Campus Help**

### **1. External Law Enforcement Authorities**

Any individual who has experienced an incident of Sexual and Gender-Based Misconduct involving potential criminal conduct has the option to report (or not report) the conduct to an external law enforcement authorities that has jurisdiction over the location where the incident occurred by calling 911. In addition, the Buffalo Police Sex Offence Unit at 716-851-4494 or the state police at 1-844-845-7269 may be contacted if the incident took place locally.

If a Student chooses to report an incident to an external law enforcement authority, she or he may request assistance from the college in notifying the external law enforcement authority of the incident. The following individuals may be contacted for assistance in contacting law enforcement: Public Safety officers, the college's Sexual Assault Liaison (Confidential), Counseling Center Staff (Confidential), or the Title IX Coordinator. The college will comply with any Student's request for assistance in notifying external law enforcement authorities

### **2. Medical Treatment**

The college encourages individuals who have experienced a recent sexual assault or act of physical violence to visit a hospital or clinic to assess and address their medical needs. A medical exam affords confidentiality and can assess an individual's injuries and provide necessary medical advice and medication. Medical facilities can also screen for the presence of sedative drugs such as Rohypnol or GHB (date-rape drugs), as well as take steps to preserve evidence.

The following local medical facilities are confidential resources and information provided during a medical exam will not be released or shared without the patient's consent. Disclosure to these resources does not provide any information to the college.

#### **Erie County Medical Center**

462 Grider St., Buffalo

(716) 898-3161

#### **Buffalo General Hospital**

100 High St., Buffalo

(716) 859-7100

#### **Sisters of Charity Hospital**

2157 Main St., Buffalo

(716) 862-1800

#### **Women & Children's Hospital**

219 Bryant St., Buffalo

(716) 878-7408

All persons may also request that an advocate accompany them to the hospital. This may be a friend or other support person.

If the incident is a crime, these providers will report it without any identifying information to Public Safety for inclusion in the daily crime log and annual statistical report and for issuance of any required timely warning as required by the Clery Act.

### **3. Counseling/Victim Advocacy Resources**

An individual reporting an act of Sexual and Gender-Based Misconduct also has the option to confidentially disclose the incident and obtain services from the following off-campus counseling/victim advocacy resources and hotlines. Disclosure to these resources does not provide any information to the college.

**Crisis Services**

<http://crisisservices.org/>

(716) 834-3131

Crisis Services is staffed 24 hours a day by trained volunteers who are able to connect with professional counselors for emergency outreach. Crisis services will send a counselor to meet individuals in the emergency room.

**New York State Office for the Prevention of Domestic Violence**

[www.opdv.ny.gov/help/dvhotlines.html](http://www.opdv.ny.gov/help/dvhotlines.html)

1-800-942-6906

**National Sexual Assault Hotline**

<http://www.rainn.org/>

1-800-656-4673

**Pandora's Project**

<http://www.pandys.org/lgbtsurvivors.html>;

**GLBTQ Domestic Violence Project**

<http://www.glbtqdv.org/>;

**Safe Horizons**

<http://www.safehorizon.org/>.

**C. Preservation of Evidence and Forensic Examination**

**1. Preservation of Evidence**

Evidence of a sexual assault and the perpetrator's identity may be left on an assault victim's body, clothing and belongings. In order to best preserve evidence, it is important that, if possible, persons believing that they have been the victim of a sexual assault do not shower, bathe, wash, comb their hair, use the toilet, smoke, brush their teeth, eat or drink, and wash clothes, sheets, blankets or other items. Anything of evidentiary value should be placed in a paper bag (plastic bags are discouraged). Also, individuals are urged to photograph visible injuries. Pictures of injuries should be taken in both close-up and wide-angle. A credit card, coin, or dollar bill should be used in the pictures for reference of size. Collecting evidence does not obligate an individual to any particular course of action but can assist an external law enforcement agency should criminal charges ultimately be pursued.

**2. Forensic Examination**

Within 96 hours\* of a sexual assault, the assault victim has the option to undergo a Sexual Assault Forensic Exam at a local hospital for purposes of evidence collection. This option is available even if the assault victim has not decided whether she or he wishes to pursue any action against the alleged perpetrator. The exam is performed by a skilled clinician and includes assessment for and

treatment of injury, addressing concerns of pregnancy and sexually transmitted infections, and collection of evidence.

- Choosing to undergo a Sexual Assault Forensic Exam (commonly referred to as a "Rape Kit") does not require the individual to report the incident to an external law enforcement agency or to the college. Undergoing the exam, however, will help to ensure that the victim receives proper care and preserves her or his opportunity to support a disciplinary or criminal action if she or he decides later to prosecute, seek a protective order or report the incident to the college.
- While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. Individuals are encouraged to let hospital personnel know if they do not want their insurance policyholder to be notified about access to these services.
- The New York State Office of Victim Services may be able to assist in compensating individuals for health care and counseling services, including emergency funds. More information may be found [here](#) or by calling 1-800-247-8035. Options are explained [here](#).

\*Even if 96 hours have elapsed, the exam is still recommended, although its utility may be diminished. Therefore, persons believing that they have been the subject of a sexual assault are advised to seek and secure a Sexual Assault Forensic Exam at the earliest possible opportunity.

## IV. Reporting Options

The college urges persons who believe they have been victims of Sexual or Gender-Based Misconduct to address their situation by reporting to the College or to local law enforcement. Individuals are strongly encouraged to speak with someone on campus or off campus, regardless of their choices to report or not to report the alleged violation to the college or law enforcement, so as to ensure they receive all necessary support. Persons who believe they have been victims of Sexual or Gender-Based Misconduct have the right to make a report to campus security, local law enforcement, and/or state police, or choose not to report; to report the incident to Canisius or not to report; and to receive assistance and resources from the college. Retaliation against an individual who brings a good faith report, participates in an investigation, or pursues a criminal charge is prohibited, and will not be tolerated by the college.

### A. Reporting to the College

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected Sexual and Gender-based Misconduct to appropriate college officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless you have requested information to be shared. Other resources exist to report crimes and policy violations and these resources will take action when victimization is reported to them.

The college respects an individual's decision in regards to reporting. If an individual chooses not to report or otherwise participate in the college review of an incident, the college may pursue the matter without the individual's participation in accordance with Title IX requirements. Moreover, if information about an incident of Sexual and Gender-Based Misconduct or associated incidents of Retaliation comes to the attention of the college, the matter will be referred to the Title IX Coordinator, who will review the facts and make an immediate assessment of any risk of harm to the individual who chose not to report, and/or to the broader college community, and will take steps necessary to address those risks. If warranted, these steps may include protection measures, accommodations, and/or Interim Measures to provide for the safety of the individual at issue and the

college community. Canisius may also notify appropriate external law enforcement authorities if required or warranted by the nature of the information of which it becomes aware.

The following describe the two reporting options at the college:

### **1. Confidential Reporting**

If a Reporting Party would like the details of an incident to be kept confidential, the Reporting Party may speak with the following resources:

- The licensed professional counselors at the Counselor Center (*students only resource*);
- The college's Sexual Assault Liaison (Eileen Niland, MS, LMHC, NCC) (*students only resource*); and
- The campus health service providers at the Canisius College Student Health Center (*students only resource*).

All of the above employees will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Campus counselors are available to help free of charge and can be seen on an emergency basis during normal business hours. They will listen and help access additional on and/or off-campus assistance and explain options for obtaining additional protections and support from the college and others. Such protection and support may include, for example, victim advocacy services, academic support or accommodations, health or mental health services, and changes to living, working, or course schedules. These employees will also explain protections against Retaliation, and that the Title IX Coordinator will not only take steps to prevent Retaliation, but also take strong responsive action should it occur. These employees will also submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

In addition or in lieu of the speaking to the college's confidential resources, the Reporting Party may opt to speak with the following confidential off-campus resources:

#### **Crisis Services**

<http://crisisservices.org/>

(716) 834-3131

#### **New York State Office for the Prevention of Domestic Violence**

1-800-942-6906

[www.opdv.ny.gov/help/dvhotlines.html](http://www.opdv.ny.gov/help/dvhotlines.html)

#### **National Sexual Assault Hotline**

1-800-656-4673

<http://www.rainn.org/>

#### **Pandora's Project**

<http://www.pandys.org/lgbtsurvivors.html>;

#### **GLBTQ Domestic Violence Project**

<http://www.glbtdvp.org/>

#### **Safe Horizons**

<http://www.safehorizon.org/>

All college employees are also eligible to receive free of charge confidential consultation and counseling via Child and Family Services, 2495 Main Street, Suite 357, Buffalo, NY 14214.

## **2. Formal Reporting to the College**

All college employees, including student resident advisors and resident directors, have a duty to report claims or incidents of sexual misconduct and sexual violence, unless they fall under the "Confidential Reporting" section above. Reporting Individuals may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator.

If a Reporting Individual does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the Reporting Individual may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, plan, premeditation, threat, weapons and/or violence, the college will likely be unable to honor a request. In cases where the Reporting Individual requests privacy and the circumstances allow the college to honor that request, the college will offer interim supports and remedies to the Reporting Individual and the community, but will not otherwise pursue formal action. When a Reporting Individual makes a non-confidential report to the college, she or he has the right to expect the college to institute proceedings to resolve the matter promptly, fairly, and impartially from the initial investigation to the final result. Retaliation will not be tolerated.

College offices and employees who receive a report or disclosure under circumstances that cannot guarantee confidentiality nonetheless still will strive to maintain a Reporting Individual's privacy by limiting the scope of disclosure of the reported information only to the extent reasonably necessary for the Title IX Coordinator to investigate and/or seek a resolution.

The following college representatives listed below have been designated to receive formal Reports and can offer information about remedies, accommodations, evidence preservation, and how to obtain on and off campus resources:

**a. Title IX Coordinator:** Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

Terri L. Mangione, PhD

Vice President for Student Affairs

Old Main 102

716-888-2130

[mangiont@canisius.edu](mailto:mangiont@canisius.edu)

**b. Public Safety Officers:** A Report may also be made to Public Safety, which is located at Bosch Hall (tunnel level). Public Safety personnel can be contacted at 888-2330, 24 hours a day or via one of the lighted outdoor emergency phones on the campus. Public Safety personnel will immediately report to the Title IX Coordinator all relevant details about the alleged incident that the college will need to determine what happened – including the names of the Reporting Party and person allegedly violating this Policy, any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

**c. Responsible Employees:** A "Responsible Employee" is a college employee who either has the authority to redress Sexual and Gender-Based Misconduct, has the duty to report incidents of Sexual and Gender-Based Misconduct or other student misconduct, or is an individual who a student